

MASSACHUSETTS DEPARTMENT OF CORRECTION
POLICY FOR THE PREVENTION AND ELIMINATION
OF DISCRIMINATION AND RETALIATION IN THE WORKPLACE

103-DOC-239

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MASSACHUSETTS DEPARTMENT OF CORRECTION	DIVISION: ADMINISTRATION
TITLE: THE PREVENTION AND ELIMINATION OF DISCRIMINATION AND RETALIATION IN THE WORKPLACE	NUMBER: 103 DOC 239

PURPOSE: To establish a policy to prevent and eliminate all forms of discrimination, including harassment, and retaliation, and to ensure that Department of Correction ("Department") employees, independent contractors and vendors work in an atmosphere free from such conduct.

REFERENCES: Title VII of the Federal Civil Rights Act of 1964
Massachusetts General Laws, Chapter 151 B, § 4,
Paragraphs 1, 1(B), 4, and 4A

APPLICABILITY: All Department employees **PUBLIC ACCESS:** Yes
Contractors and Vendors

LOCATION:

Department Central Policy File
Each Institution's Policy File
Division of Human Resources Policy File
Deputy Commissioner Policy File
Office of Diversity Policy File
Internet/Intranet

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:

- Deputy Commissioner of Administrative Services Division
- Director of Diversity and Equal Opportunity
- Chief of the Internal Affairs Unit
- Superintendents
- Division/Department Heads

EFFECTIVE DATE: 12/21/2012

CANCELLATION: 103 DOC 239.00 cancels all previously issued Department policies, procedures, directives, bulletins, orders, notices, rules and regulations regarding the prevention of discrimination, sexual harassment, and retaliation that are inconsistent with this policy.

SEVERABILITY CLAUSE: If any part of 103 DOC 239.00 is, for any reason, held to be unconstitutional, contrary to statute or in excess of the authority of the Commissioner, such decisions shall not affect any other part of this policy.

239.01 General Policy

It is the Department's policy that all employees, including contractors and vendors, work in an environment that is free from unlawful discrimination based on race, color, age (40 and above), sex (gender), sexual orientation, ancestry, national origin, religion, handicap (disability), criminal records (applications only), genetics, veteran or military status, or any other legally protected status (hereinafter referred to collectively as "protected classes"). Discrimination and/or harassment based on an employee's membership in a protected class will not be tolerated.

In addition, it is unlawful to refuse to hire, discharge from employment, or discriminate against an individual in compensation, or in the terms, conditions, or privileges of employment, because of that person's membership in a protected class, unless the employment decision is based upon a bona fide occupational qualification.

Retaliation against an employee for exercising his/her rights under this policy, G.L. c. 151B, or applicable federal or state laws, shall similarly not be sanctioned in the workplace.

All complaints of discrimination and/or retaliation shall be investigated and addressed. Any employee found to engage in such conduct is in violation of Department policy, and shall be subject to disciplinary action that may include suspension or termination.

While this policy sets forth the Department's goals of promoting a workplace that is free of discrimination and retaliation, this policy is not designed or intended to limit the Department's authority to discipline or take remedial action for conduct which is unacceptable, regardless of whether that conduct satisfies the definition of discrimination, harassment, or retaliation.

239.02 Authority

Discrimination and retaliation are illegal under Title VII of the Civil Rights Act of 1964, and Chapter 151B, Section 4, Paragraphs 1, 1B, 4, and 4A of the Massachusetts General Laws.

239.03 Definitions

Discrimination: subjecting a person to unequal treatment based on his/her membership in one or more of the following protected classes: race, color, age, sex (gender), sexual orientation, ancestry, national origin, religion, handicap (disability), genetics, military status, criminal record (applications only), or any other legally protected status.

Harassment: is one type of discrimination. In general, harassment must amount to either a "hostile work environment," or, in matters involving sexual harassment, "quid pro quo" harassment.

Employees are protected from harassment on the basis of their race, color, religion, national origin, ancestry, sex, age, disability, participation in discrimination complaint-related activities, sexual orientation, genetics, or active military or veteran status. Prohibited verbal and non-verbal behavior includes slurs or other derogatory comments, objects, pictures, cartoons, or demeaning gestures connected to one's membership in a protected group.

Hostile work environment harassment: where a person's deliberate or repeated conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or offensive work environment based on an employee's membership in a protected class.

Quid Pro Quo Harassment: Quid pro quo sexual harassment is defined as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for an employment decision.

Retaliation: an adverse employment action against an employee who has opposed practices prohibited by G.L. c. 151B, or applicable federal or state laws, or who has filed a complaint, testified or assisted in any proceedings under this policy or section five (5) of Chapter 151B.

The law forbids retaliation when it comes to any aspect of employment, including hiring, firing, pay, job assignments,

promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Office of Diversity and Equal Opportunity: a Division of the Department that is responsible for implementing and monitoring Executive Order 526 which promotes diversity and equal opportunity that embraces the values and respects the differences of its employees. The Office of Diversity provides employees with assistance in resolving complaints of discrimination or retaliation, addresses employment questions from the public and employees, administers the Self Certification of Disability or Vietnam Era Veteran status, and manages Reasonable Accommodation procedures.

In addition, the Department Office of Diversity enforces the laws that make it illegal to fire, demote, harass, or otherwise "retaliate" against employees or applicants because they filed a charge of discrimination, because they complained to their employer or other entity about discrimination on the job or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).

239.04 Roles and Responsibilities

The **Department** is responsible for:

1. Preventing:
 - A. Acts of discrimination or retaliation by the Department's agents and its supervisory employees;
 - B. Acts of discrimination or retaliation by co-workers, directed toward Department employees, for cases in which the Department, its agents or its supervisory employees knew or should have known of the conduct; or
 - C. Acts of discrimination or retaliation by non-employees providing services on behalf of the Department, for cases in which the Department's agents or its supervisory employees knew or should have known of the conduct.

2. Taking prompt and appropriate corrective action as soon as practical or as soon as a complaint is made to appropriate personnel or office.
3. Notifying the Complainant and the Respondent of the outcome of any internal investigation upon its completion. Notification shall be made by the Office of the Deputy Commissioner of the Administrative Services Division.

The Office of Diversity and Equal Opportunity is responsible for the following:

1. Publicizing its availability to all Department employees, contractors and/or vendors, maintaining an accessible office and staffing the Help Desk for internal and external stakeholders.
2. Assisting employees in the filing of complaints of alleged discrimination or retaliation, and forwarding such complaints to the Internal Affairs Unit via an Intake Form.
3. Through the Department Meet to Resolve Employee Mediation Program, providing voluntary and confidential services for employees to address appropriate disputes in the workplace. Individuals or Supervisors may apply to use this program as an alternative way or in addition to traditional and legal means to address complaints.
4. Reviewing Category II investigations conducted by the Internal Affairs Unit concerning allegations of discrimination or retaliation for the purpose of determining a policy violation and providing recommendations for corrective action or to improve work environment.
5. Maintaining accurate and current records of discrimination or retaliation and their disposition.
6. Distributing to each employee:
 - A. An explanation of this policy and complaint procedure, as soon as possible after hire

and a notice to all employees referencing this policy on an annual basis;

- B. Notification of any changes to the above, as soon as administratively possible.

The **Internal Affairs Unit** is responsible for the following:

1. Receiving complaints of alleged discrimination or retaliation.
2. Conducting investigations of discrimination and retaliation complaints in an expeditious manner, including providing notice to the person alleged to have discriminated or retaliated against another employee when a formal complaint is filed.
3. Presenting factual findings and/or conclusions to the Office of Diversity to determine whether, based on the facts discovered, a violation of this policy has occurred.
4. Maintaining accurate and current records of such complaints and their disposition.

Superintendents, Division Heads, and Supervisory personnel are responsible for the following:

1. Taking all necessary steps to prevent discrimination and retaliation, and to promote and maintain a work environment free from such conduct. Supervisory personnel shall be held responsible for the conduct of an employee that is known, or should have been known, to have created a discriminatory or retaliatory work environment, unless immediate and appropriate corrective action is taken.
2. Reporting all complaints of discrimination or retaliation to the Superintendent or Division Head, who shall then report such allegations to the Internal Affairs Unit via the Intake form.

Employees are responsible for the following:

1. Ensuring that they do not discriminate or retaliate against any other employee, applicant for employment, or any other individual in the workplace.
2. Cooperating in an investigation of alleged discrimination or retaliation by providing any information they possess concerning the matter being investigated.
3. Actively participating in the Department's efforts to prevent and eliminate discrimination and retaliation and to maintain a working environment free from such conduct.

239.05 Reporting Requirements

As required by Rule 6(d) of the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, all allegations, reports or incidents of discrimination and/or retaliation by or against an employee, volunteer, or contractor must be immediately reported to the Superintendent, Division Head, or his/her designee verbally and followed up with an incident report before the end of the shift. During non-business hours, these allegations must be reported to the shift commander who shall ensure that the Superintendent or Division Head is immediately notified. If any employee, except for a victim of an incident of discrimination and/or retaliation, has knowledge of such an incident and fails to report it, he/she may be subject to disciplinary action, up to and including termination. Failure of a volunteer or contractor, except for a victim, to report such an incident may result in the volunteer or contractor being barred from all Department institutions.

239.06 Procedure for Reporting and Investigating Internal Complaints

1. Reporting Process

The Department has developed an internal complaint procedure to ensure an orderly, fair and confidential investigation process, which protects the rights of all parties involved.

An employee, or prospective employee, contractor, or vendor, who feels that he/she, has been subjected to discrimination or retaliation should immediately report the complaint to the Internal Affairs Unit, Office of Diversity, Superintendent, Director or Division Head. If the complaint is not initially reported to the Internal Affairs Unit consistent with 103 DOC 522.00, Internal Affairs Unit, all complaints shall immediately be forwarded to the Internal Affairs Unit for investigation.

2. Investigative Process

All complaints made pursuant to this policy shall be designated as Category II complaints. The investigator shall meet privately with the employee in order to provide a copy of the Department's policy, to discuss the complaint procedure and to document the complaint. The employee's account should include the following:

- A. a description of the incident(s)
- B. the name(s) of the accused
- C. date(s) and time(s)
- D. location(s)
- E. specific word(s)/action(s)
- F. witness(es) to the occurrence(s)

The assigned investigator shall complete a fair, impartial and thorough investigation. Most investigations shall involve conducting interviews of the Complainant, the Respondent against whom the complaint was filed, and witnesses, as well as collecting all available evidence that supports or disputes the allegations in the complaint. Witnesses should be interviewed privately and individually, and neither the alleged Respondent nor the Complainant should be present.

The investigator shall inform all persons interviewed of the existence of a complaint and the general nature of its allegations. When required by law, the person interviewed shall be allowed representation.

The investigator shall instruct the person interviewed of his/her obligation to cooperate in the investigation and that failure to cooperate may lead to disciplinary action, up to and including termination.

All interviews shall be tape-recorded. Upon written request and at the conclusion of the investigation, a copy of the tape recording shall be provided to the employee if disciplinary charges are brought against him/her.

At the conclusion of the investigation, a written report shall be prepared, which shall include the following:

- A. A copy of the original complaint.
- B. Copies of statements or reports taken from the Complainant, Respondent or from witnesses to the alleged incident.
- C. Tape-recorded interviews.
- D. Investigative Report summarizing all evidence gathered.
- E. Finding(s) and conclusions.
- F. Executive review and recommendations.

If during the process of an internal investigation, the Complainant indicates a desire to withdraw the complaint, every effort shall be made to ensure that this decision is made voluntarily, and a signed statement to this effect shall be obtained from the Complainant. A withdrawn complaint does not necessarily end an investigation, especially where: (1) multiple complaints have been made against the same alleged Respondent (2) the complaint involves possible criminal actions.

Any attempt, directly or indirectly, on the part of a Department employee to obstruct any internal investigation or to threaten or persuade a Complainant to withdraw a complaint is prohibited and shall result

in disciplinary action, up to and including termination.

The investigator's findings do not in any way affect the Complainant's right to pursue a complaint with the appropriate state or federal authorities.

All final reports of discrimination or retaliation shall be reviewed by the Chief of the Internal Affairs Unit, and forwarded to the Office of Diversity for a determination of whether the facts found by the investigator amount to a violation of this policy. After review and recommendation (s) by the Office of Diversity, the investigative package must be assessed by the Deputy Commissioner of the Administrative Services Division.

Also at the conclusion of the investigation, both the Complainant and the Respondent (employee who was charged with misconduct) shall be promptly notified, in writing, of the results of the investigation. Notification shall be made by the Deputy Commissioner of Administration's Office.

239.07 Possible Findings and Recommendations

Investigations of alleged misconduct shall result in one or more of the following findings:

Sustained- the investigation disclosed sufficient evidence demonstrating that the conduct in question occurred and constituted a violation of Department policy, rules and regulations, post orders, or federal, state or local laws.

Not sustained- there is insufficient evidence to prove or disprove the complaint.

Exonerated- the evidence demonstrates that the behavior in question did occur, but that such behavior did not constitute a violation of Department policy, rules and regulations, post orders, or federal, state or local laws.

Unfounded- the Complainant acted in bad faith by either knowing that the allegation was false or recklessly filing the complaint. Any employee who knowingly makes a false

accusation shall be subject to appropriate disciplinary action.

239.08 Disciplinary Action

If it is determined that inappropriate or illegal conduct occurred; the Department shall impose discipline on the employee who violated this policy, ranging from counseling, suspension, up to and including termination.

239.9 Prohibition Against Retaliation

Pursuant to G.L. c. 151B, Section 4(4), any employee, contractor, or vendor who files a complaint or cooperates in an investigation shall not be subjected to retaliation or reprisal. Any employee, contractor, or vendor believing he/she may have been retaliated against may amend his/her complaint or file a separate complaint, which shall be investigated pursuant to this policy.

239.10 Confidentiality

1. All complaints made pursuant to this policy, and investigations into such complaints, shall be afforded the highest possible degree of confidentiality.
2. In order to ensure that the individual rights of employees who are the subject of an Internal Affairs Unit investigation are protected, all materials relevant to an investigation of staff misconduct shall be processed and stored in a manner that prevents unauthorized access.
3. Investigators, administrators, witnesses, and other parties shall not discuss any aspect of an ongoing investigation with any persons without proper approval of the Superintendent/Division Head or the Chief of the Internal Affairs Unit.

239.11 Collective Bargaining Agreement Grievance Process

Collective bargaining agreements have specific time frames within which a grievance shall be filed (generally twenty-one (21) calendar days for Step I grievance); some agreements may also limit whether or not the grievance or complaint process may be used. Employees should consult the applicable collective bargaining agreement for the

employee's job title to determine what the grievance process and time frame is for discrimination complaints. An employee's decision not to file a grievance does not waive any rights under this policy.

239.12 State and Federal Remedies

In addition to the internal complaint or contractual grievance procedure outlined above, as well as the protections included in many collective bargaining agreements, employees who believe they have been subjected to discrimination or retaliation may file a formal complaint with the following government agencies:

1. Massachusetts Commission Against Discrimination

Julian Tynes, Chairman
One Ashburton Place, Room 601
Boston, Massachusetts 02108-1599
Telephone 617-994-6000

436 Dwight Street, Room 220
Springfield, Massachusetts 01103
Telephone 413-739-2145

Employees must file a written complaint within three hundred (300) days (effective November 5, 2002) of the alleged discrimination. The MCAD recommends that complaints be filed in person.

2. State Office of Diversity and Equal Opportunity, Human Resources Division

Sandra Borders, Director
One Ashburton Place, Room 213
Boston, Massachusetts 02108-1516
Telephone 617-878-9812

Employees must file a written complaint within one hundred eighty (180) days of the alleged discrimination.

3. U.S. Equal Employment Opportunity Commission

Jacqueline A. Berrien, Chair
John F. Kennedy Federal Building
Government Center
4th Floor, Room 475
Boston, MA 02203

Phone: 617-565-3200 or 800-669-4000

Employees must file a written complaint within three hundred (300) days of the alleged discrimination.

MASSACHUSETTS DEPARTMENT OF CORRECTION	ADMINISTRATION
TITLE: THE PREVENTION AND ELIMINATION OF DISCRIMINATION AND RETALIATION IN THE WORKPLACE	NUMBER: 103 DOC 239 APPENDIX I

DEPARTMENT OF CORRECTION CONTACT INFORMATION

DOC Office of Diversity and Equal Opportunity:

Office of Diversity and Equal Opportunity
Industries Drive
PO Box 946
Norfolk, MA 02056
508-850-7790 (telephone)
508-850-7785 (facsimile)

Internal Affairs Unit:

Internal Affairs Unit
DOC Headquarters
50 Maple Street, Suite 3
Milford, MA 01757
508-422-3376 (telephone)
508-422-3242 (facsimile)

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EXAMPLES OF PROHIBITED CONDUCT- HARASSMENT

The legal definition of sexual harassment is broad and reflects, but is not limited to, the following considerations:

1. Sexual harassment does not refer to occasional compliments of a socially acceptable nature, or welcomed social relationships. It refers to deliberate or repeated behavior, consisting of verbal comments, gestures or physical contact of a sexual nature that is not welcome, that is personally offensive, that lowers morale and that, therefore, interferes with work productivity.
2. This unwelcome sexual behavior is defined from the perspective of the victim, not the harasser. Some examples of such behavior may include, but are not limited to, the following:
 - i Direct sexual advances or sexual assault.
 - i Sexual inquiries, jokes and epithets.
 - i Derogatory comments about a person's sex or sexual orientation or membership of a protected group.
 - i Other forms of verbal abuse of a sexual nature, such as whistling or catcalling.
 - i Offensive or unnecessary touching, such as patting, pinching or constant brushing against a person.
 - i Physical interference with a person's movements.
 - i The display of sexually suggestive posters, photographs or such objects.
 - i The requirement that a person wear sexually revealing clothing.

In addition, the following factors are relevant to hostile work environment harassment based on an employee's membership in any protected class identified in section 239.01 of this policy:

- i The "unwelcome" behavior is defined from the perspective of the victim, not the harasser.
- i A man as well as a woman may be the victim of harassment, and a woman as well as a man may be the harasser.
- i Harassment is not limited to prohibited behavior by a male employee toward a female or by a supervisory employee toward a non-supervisory employee.
- i The harasser does not have to be the victim's supervisor. The harasser may be a supervisor who does not supervise the victim, a non-supervisory employee (co-worker), or, in some circumstances, even a non-employee, such as a recipient of public services or a vendor.
- i The victim does not have to be the opposite sex from the harasser.
- i The victim does not have to be the person at whom the unwelcome conduct is directed. The victim may be someone who is a witness to, and personally offended by, such conduct when it is directed toward another person.
- i Harassment can occur outside of the workplace itself, including but not limited to work assignments away from the workplace, at employer-sponsored off-site social events, online social networks and chat rooms if the behavior creates a hostile work environment for the victim.